

5-309

After Recording Return To:
Vial Fotheringham, LLP
2225 East Murray-Holladay Rd., Suite 203
Holladay, UT 84117

9145883
08/13/2004 03:29 PM \$327.00
Book - 9025 Pg - 6089-6093
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
WATERBURY HOA
1550 E 5830 S
SLC UT 84121
BY: ELF, DEPUTY - WI 5 P.

**AMENDMENT TO
THE DECLARATION OF CONDOMINIUM
OF WATERBURY OPEN SPACE COMMUNITY**

This Amendment to the Declaration of Condominium ("Declaration") that established a condominium known as Waterbury Open Space Community is made this 12th day of August, 2004 by the Waterbury Homeowners Association ("Association").

RECITALS

A. Certain real property in Salt Lake County, Utah, known as Waterbury Open Space Community was subjected to certain covenants, conditions, and restrictions pursuant to a Declaration of Condominium dated June 22, 1973 and recorded in **Book 3356, Page 23, et seq.** in the Recorder's Office for Salt Lake County, Utah;

B. Subparagraph 8(h) was added to the Declaration by amendment July 16, 1996, and was recorded as **Entry No. 6407025** in the Recorder's Office for Salt Lake County, Utah;

C. This amendment shall be binding against the property described in the Declaration and any annexation or supplement thereto.

D. To avoid the communal ills, including among other things, rules violations, abuse and destruction of community and private property and the consequent increase in insurance premiums, and the diminished safety of the owners, associated with a high levels of tenancy, the Association deems restricting and regulating the manner of renting and number of rentals within the community necessary and in the best interest of the owners;

E. Pursuant to Paragraph 12 of the Declaration, Unit Owners representing more than two-thirds (2/3) of the undivided interests in the Common Areas approved this Amendment.

NOW, THEREFORE,The Association, by and through its Management Committee, hereby amends Subparagraph 8(h) of the Declaration of Condominium in its entirety to read as follows:

8. Use Restrictions.

(h) Leasing and Renting of Units. Notwithstanding the provisions of Paragraph 14 of this Declaration, the leasing and renting of units by owners shall be in accordance with this subparagraph. "Leasing or renting" of a unit means the granting of a right to use or occupy a unit for a specific term or indefinite term (with rent stated on a periodic basis), in exchange for the payment of rent (money, property or other goods or services of value); but shall not mean and include joint ownership of a unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

(1) Rental-Lease Limit. Owners and units shall be subject to the following restrictions:

(i) No owner may lease or rent less than the entire unit and no owner may lease or rent any unit for a period of less than twelve (12) consecutive months.

(ii) No unit may be rented or leased if the rental or lease results in more than fourteen percent (14%) of units ("Rental-Lease Limit") being rented or leased, except as provided in Subparagraph 8(h)(3).

(2) Application and Approval. Prior to renting or leasing any unit, an owner shall apply to the Management Committee for approval. The Committee shall review the application and make a determination of whether the rental or lease will exceed the Rental-Lease Limit. The Committee shall:

(i) Approve the application if it determines that the rental or lease will not exceed the Rental-Lease Limit; or

(ii) Deny the application if it determines that the rental or lease of the unit will exceed the Rental-Lease Limit.

(3) Hardship Exemption. Notwithstanding Subparagraphs 8(h)(2)(i) and (ii), to avoid undue hardships or practical difficulties such as the owner's job relocation, extended vacation, disability, military service, charitable service, or other similar circumstances, the Management Committee shall have discretion to approve an owner's application to temporarily rent or lease the owner's unit provided the approval would not result in more than twenty percent (20%) of the total units being rented or leased.

The Management Committee, in its discretion, may use a percentage of the Units described in Subparagraph 8(h)(1)(ii) above, if available, for hardship exceptions.

The Board may not approve an application to rent or lease less than the owner's entire unit or to rent or lease the unit for a period of less than twelve (12) consecutive months.

(4) Multiple Unit Ownership. An owner is not eligible to rent more than

one unit until the pending applications of:

(i) All owners who are not currently renting or leasing a unit have been approved; and

(ii) All owners who are currently renting or leasing fewer units than the applicant have been approved.

(5) Review of Rental Applications. Applications from an owner for permission to rent or lease shall be reviewed and approved or denied by the Management Committee pursuant to the following:

(i) The Management Committee shall review applications for permission to rent or lease in chronological order based upon the date of receipt of the application. Within ten (10) business days of receipt, the Committee shall approve or deny an application as provided in Subparagraph 8(h)(2) and shall notify the owner within fifteen (15) business days of receipt of the application if permission is not given and the reason for the denial.

(ii) If an owner's application is denied, the applicant may be placed on a waiting list according to the date the application was received so that the owner whose application was earliest received will have the first opportunity to rent or lease, subject to Subparagraph 8(h)(4).

(6) Application Form; Approval Process; Waiting List. An application form, the application and approval process, a waiting list, and any other rules deemed necessary by the Committee to implement this section shall be established by rules adopted by resolution of the Management Committee consistent with this Subparagraph 8(h).

(7) Approved Lease Agreement. All owners shall use and provide the Management Committee with a copy of The Waterbury Homeowners' Association Approved Residential Lease Agreement ("Approved Lease Agreement") which shall be kept on file with the books and records of the Association so that the Association may determine the number of units rented or leased. The Approved Lease Agreement shall be on a form prescribed by resolution of the Committee.

(8) Violations of Rental Restrictions. If an owner fails to submit the required application, fails to use and submit a copy of the Approved Lease Agreement and rents or leases any unit, and/or rents or leases any unit after the Management Committee has denied the owner's application, the Management Committee may assess fines against the owner and the owner's unit in an amount to be determined by the Committee pursuant to a schedule of fines adopted in accordance with Utah Code Ann. 57-8-37. In addition, regardless of whether any fines have been imposed, the Management Committee may proceed with any other available legal remedies, including but not limited to, an action to terminate the rental or lease agreement and removal of any tenant or lessee.

(9) Recovery of Costs and Attorney Fees. The Association shall be entitled to recover from the offending owner its costs and attorney's fees incurred for enforcement of this Subparagraph 8(h), regardless of whether any lawsuit or other action is commenced. The Association may assess such costs and attorney's fees against the owner and the unit as an assessment pursuant to Paragraph 7 of this Declaration.

(10) Grandfather Clause. As of the date of recording of this amendment, any owner that is currently renting or leasing a unit ("Grandfathered Owner") may continue to rent or lease their unit until such time as the unit is sold or title is otherwise transferred to a new owner of record. However, notwithstanding the grandfather provision above, if a Grandfathered Owner fails to re-let their unit within ninety (90) days of the expiration or termination of a rental or lease agreement by any tenant, then the Grandfathered Owner and unit become subject to the Rental-Lease Limit expressed above and shall apply to the Management Committee for permission to rent or lease the unit in accordance with this Subparagraph 8(h).

(11) Owner Obligation to Inform Tenant and Association. Rental and lease agreements shall comply with the following:

(i) The owner shall provide the tenant or lessee with a copy of all rules and regulations (the "Rules and Regulations") then in effect and shall take a receipt for delivery of the Rules and Regulations. In the event the Rules and Regulations are amended, revised, changed, or supplemented by the Association, the owner shall provide the tenant or lessee with a copy of the amendments, revisions, changes, or supplements within ten (10) calendar days of adoption by the Association, its Management Committee, or its membership.

(ii) Upon the commencement of the rental or lease period, the owner shall provide the Association with a copy of the Approved Lease Agreement and a copy of the receipt specified in Subparagraph 8(h)(11)(i) of this paragraph. If the owner fails to provide the receipt, the Association shall provide a copy of the Rules and Regulations to the tenant or lessee and take a receipt therefor, and shall assess a reasonable charge therefor to the owner as an assessment pursuant to Paragraph 7 of this Declaration.

(12) Termination of Lease or Rental Agreement for Violations In addition to any other remedies available to the Association, the Management Committee may require the owner to terminate a lease or rental agreement if the Committee determines that any lessee or tenant has violated any provision of this Declaration, the Articles of Incorporation, the Bylaws, or any amendments thereto, or the Rules and Regulations adopted thereto.

IN WITNESS WHEREOF, THE WATERBURY HOMEOWNERS ASSOCIATION has executed this Amendment to the Declaration as of the 12th day of August, 2004, in accordance with Paragraph 12 of the Declaration.

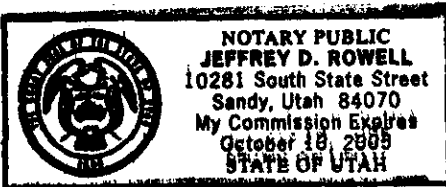
THE WATERBURY HOMEOWNERS ASSOCIATION

[Signature]
President

[Signature]
Secretary

STATE OF UTAH)
) ss
County of Salt Lake)

On the 12th day of August 2004, personally appeared Frank Eugene Zigrossi and Gary Lamar Wells who, being first duly sworn, did that say that they are the President and Secretary of the Association and that the seal affixed to the foregoing instrument is the seal of said Association and that said instrument was signed and sealed in behalf of said Association by authority of its Management Committee; and each of them acknowledged said instrument to be their voluntary act and deed.



[Signature]
Notary Public for Utah